

Remarks

Applicant's attorney thanks the Examiner for the issuance of the May 15th Office Action. As indicated in the Office Action, it has been made final. In such circumstances, a Request for Continued Examination ("RCE") is enclosed herewith. In view of the enclosed RCE, entry and consideration of this Amendment are respectfully requested.

In the Office Action, the Examiner has objected to Claim 16 because it is "a substantial duplicate of claim 1". By the foregoing amendments, Claims 16-20 have been cancelled. Accordingly, the Examiner's objection to Claim 16 has been obviated.

The Examiner has also rejected Claims 1-20 based upon a single primary reference, i.e., Amid et al. International Publication No. WO 02/07648 (hereinafter "the Amid et al. '648 International Publication"), either alone or in combination with one or more secondary references. The following listing summarizes the claim rejections contained in the Office Action.

1. Claims 1 and 16 - rejected under 35 U.S.C. §102(e) as being anticipated by the Amid et al. '648 International Publication;
2. Claims 2-6, 14, 15 and 17-19 - rejected under 35 U.S.C. §103 as being unpatentable over the Amid et al. '648 International Publication in view of Mulhauser et al. U.S. Patent No. 5,766,246 (hereinafter "the Mulhauser et al. '246 Patent");
3. Claim 7 - rejected under 35 U.S.C. §103 as being unpatentable over the Amid et al. '648 International Publication in view of the Mulhauser et al. '246 Patent and in further view of Kugel U.S. Patent No. 5,634,931 (hereinafter "the Kugel '931 Patent");

4. Claims 8-10 - rejected under 35 U.S.C. §103 as being unpatentable over the Amid et al. '648 International Publication in view of the Mulhauser et al. '246 Patent, in further view of the Kugel '931 Patent and in further view of Kugel U.S. Patent No. Des. 416,327 (hereinafter "the Kugel '327 Patent"); and
5. Claims 11-13 and 20 - rejected under 35 U.S.C. §103 as being unpatentable over the Amid et al. '648 International Publication in view of the Mulhauser et al. '246 Patent and in further view of the Kugel '327 Patent.

It is respectfully submitted that the primary reference relied upon by Examiner Gilpin in the Office Action (i.e., the Amid et al. '648 International Publication) does not qualify as prior art against the present application under 35 U.S.C. §102(e), regardless of whether the previous or new version of 35 U.S.C. §102(e) (i.e., the provisions of 35 U.S.C. §102(e) prior to or subsequent to the enactment of the American Inventors Protection Act of 1999 (AIPA) and Intellectual Property and High Technology Technical Amendments Act of 2002) is applied. More particularly, under the pre-AIPA version of 35 U.S.C. §102(e), only issued U.S. patents can be applied as prior art. Since the Amid et al. '648 International Publication is not a U.S. patent, it does not constitute prior art against the present application under the pre-AIPA version of 35 U.S.C. §102(e). According to the post-AIPA version of 35 U.S.C. §102(e), published international applications may be applied as prior art, if they designate the United States as an elected state (see MPEP §706.02(f)(1)). Because the United States is not designated in the Amid et al. '648 International Publication, this reference does not qualify as prior art against the present application under the post-AIPA version of 35 U.S.C. §102(e).

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Because Examiner Gilpin, who was in charge of this application, left the United States Patent and Trademark Office, applicant's attorney initiated a telephonic interview with her supervisor (Examiner McDermott) for the purpose of discussing the propriety of applying the Amid et al. '648 International Publication in the Office Action. During the interview, Examiner McDermott acknowledged that the Amid et al. '648 International Publication does not constitute prior art against the present application. Examiner McDermott, however, informed applicant's attorney that U.S. Appln. Serial No. 09/624,779 corresponding to the Amid et al. '648 International Publication would mature into a U.S. patent in the near future. As a result, Examiner McDermott was of the opinion that this U.S. patent would, upon its issuance, qualify as prior art under 35 U.S.C. 102(e) and that the final claim rejections contained in the Office Action could therefore be properly maintained and would not hence be withdrawn.

Applicant's attorney has ascertained that Amid et al. U.S. Patent No. 6,610,006 (hereinafter "the Amid et al. '006 Patent") issued from the Amid et al. U.S. application mentioned in the preceding paragraph on August 26, 2003. The Amid et al. '006 Patent has a filing date of July 25, 2000. As shown in the enclosed AFFIDAVIT OF ROBERT A. ROUSSEAU UNDER 37 CFR 1.131, the Inventor in this case, Mr. Rousseau, had completed his invention in the United States before July 25, 2000 and can therefore antedate the Amid et al. '006 Patent (as well as the Amid et al. '648 International Publication). In such circumstances, since the '006 Patent is the sole primary reference relied upon by the Examiner in the Office Action (by virtue of the fact that it will replace the

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Amid et al. '648 International Publication), applicant respectfully submits that its removal as a prior art reference successfully obviates all bases of the Examiner's outstanding rejections under 35 U.S.C. §102 and §103 and that Claims 1-15 are therefore in condition for allowance. In this regard, applicant's attorney notes that the date in Exhibit A attached to the enclosed Affidavit has been redacted as provided in MPEP §715.07.

Based upon the foregoing comments, applicant respectfully requests reconsideration and allowance of Claims 1-15. Should there remain any questions or other matters whose resolution could be advanced by a telephone call, the Examiner is cordially invited to contact applicant's undersigned attorney at his number below.

It is believed that no fees are attributable to this Amendment. Should there be any fees required as a result of this Amendment, including any extension fees, the Examiner is authorized to charge them to Deposit Account No. 501402.

Respectfully submitted,

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